

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

QUEEN ROGERS

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:04cv337-DCB-JMR

YOROZU AUTOMOTIVE AND
WILLSTAFF WORLDWIDE STAFFING

DEFENDANTS

ORDER

This matter comes before the Court on Yorozu Automotive's Motion to Dismiss for Failure to Comply with Discovery [**docket entry no. 53**]. That motion, filed on December 6, 2005, requested a dismissal of the plaintiff's action because of her continuing failure to comply with discovery. The Court issued a Show Cause Order on March 13, 2006, directing the plaintiff to respond to said motion within ten (10) days and show cause why the defendant's motion should not be granted. The plaintiff failed to respond to that order. The Court then entered yet another order on April 12, 2006, recognizing that the defendant's motion appeared meritorious and that the plaintiff had engaged in a continuing pattern of inattentiveness to her case. Furthermore, the Court also noted that the plaintiff had failed to respond to numerous orders. The plaintiff was cautioned in that order that if she did not respond within five days her case would be dismissed for failure to prosecute. The plaintiff has failed to respond to that order.

Pursuant to Federal Rule of Civil Procedure 41(b), a district court may dismiss a case with prejudice for failure to prosecute.

Such action may be taken upon motion by the defendant or "sua sponte" by the court. See Anthony v. Marion County General Hospital, 617 F.2d 1164, 1167 (dismissal allowed if necessary to achieve the orderly and expeditious disposition of cases). As noted by the Court in its prior order, dismissing a case for failure to prosecute is an extreme sanction and such action should be taken only where "there is a clear record of delay and contumacious conduct by the plaintiff[.]" Id. (quoting Gonzalez v. Firestone Tire & Rubber Co., 610 F.2d 241 (5th Cir. 1980)). The record in this case clearly reflects that the plaintiff is not pursuing her claims and is either unwilling or unable to respond to Court orders and discovery requests by the defendant. Accordingly,

IT IS HEREBY ORDERED that this action be **DISMISSED WITHOUT PREJUDICE** for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b);

IT IS FURTHER ORDERED that the defendant's Motion to Dismiss for Failure to Comply with Discovery [**docket entry no. 53**] is **MOOT**;

A separate final judgment dismissing this action shall be entered in accordance with Federal Rule of Civil Procedure 58.

SO ORDERED, this the 4th day of May, 2006.

S/DAVID BRAMLETTE
UNITED STATES DISTRICT JUDGE